

111TH CONGRESS
1ST SESSION

H. R. 2868

To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2009

Mr. THOMPSON of Mississippi (for himself, Mr. WAXMAN, Ms. JACKSON-LEE of Texas, Mr. MARKEY of Massachusetts, Ms. CLARKE, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chemical Facility Anti-
5 Terrorism Act of 2009”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The Nation’s chemical sector represents a
5 target that terrorists could exploit to cause con-
6 sequences, including death, injury, or serious adverse
7 effects to human health, the environment, critical in-
8 frastructure, public health, homeland security, na-
9 tional security, and the national economy.

10 (2) Chemical facilities that pose such potential
11 consequences and that are vulnerable to terrorist at-
12 tacks must be protected.

13 (3) The Secretary of Homeland Security has
14 statutory authority pursuant to section 550 of the
15 Department of Homeland Security Appropriations
16 Act, 2007 (Public Law 109–295) to regulate the se-
17 curity practices at chemical facilities that are at sig-
18 nificant risk of being terrorist targets.

19 (4) The Secretary of Homeland Security issued
20 interim final regulations called the Chemical Facility
21 Anti-Terrorism Standards, which became effective
22 on June 8, 2007.

23 (b) PURPOSE.—The purpose of this Act is to modify
24 and make permanent the authority of the Secretary of
25 Homeland Security to regulate security practices at chem-
26 ical facilities.

1 **SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION**
2 **OF AUTHORITY OF SECRETARY OF HOME-**
3 **LAND SECURITY TO REGULATE SECURITY**
4 **PRACTICES AT CHEMICAL FACILITIES.**

5 (a) IN GENERAL.—The Homeland Security Act of
6 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
7 end the following new title:

8 **“TITLE XXI—REGULATION OF SE-**
9 **CURITY PRACTICES AT CHEM-**
10 **ICAL FACILITIES**

11 **“SEC. 2101. DEFINITIONS.**

12 “In this title, the following definitions apply:

13 “(1) The term ‘chemical facility’ means any fa-
14 cility—

15 “(A) at which the owner or operator of the
16 facility possesses or plans to possess at any rel-
17 evant point in time a substance of concern; or

18 “(B) that meets other risk-related criteria
19 identified by the Secretary.

20 “(2) The term ‘chemical facility security per-
21 formance standards’ means risk-based standards es-
22 tablished by the Secretary to ensure or enhance the
23 security of a chemical facility against a chemical fa-
24 cility terrorist incident that are designed to address
25 the following:

26 “(A) Restricting the area perimeter.

1 “(B) Securing site assets.

2 “(C) Screening and controlling access to
3 the facility and to restricted areas within the
4 facility by screening or inspecting individuals
5 and vehicles as they enter, including—

6 “(i) measures to deter the unauthor-
7 ized introduction of dangerous substances
8 and devices that may facilitate a chemical
9 facility terrorist incident or actions having
10 serious negative consequences for the pop-
11 ulation surrounding the chemical facility;
12 and

13 “(ii) measures implementing a regu-
14 larly updated identification system that
15 checks the identification of chemical facil-
16 ity personnel and other persons seeking ac-
17 cess to the chemical facility and that dis-
18 courages abuse through established dis-
19 ciplinary measures.

20 “(D) Methods to deter, detect, and delay a
21 chemical facility terrorist incident, creating suf-
22 ficient time between detection of a chemical fa-
23 cility terrorist incident and the point at which
24 the chemical facility terrorist incident becomes
25 successful, including measures to—

1 “(i) deter vehicles from penetrating
2 the chemical facility perimeter, gaining un-
3 authorized access to restricted areas, or
4 otherwise presenting a hazard to poten-
5 tially critical targets;

6 “(ii) deter chemical facility terrorist
7 incidents through visible, professional, well-
8 maintained security measures and systems,
9 including security personnel, detection sys-
10 tems, barriers and barricades, and hard-
11 ened or reduced value targets;

12 “(iii) detect chemical facility terrorist
13 incidents at early stages through counter
14 surveillance, frustration of opportunity to
15 observe potential targets, surveillance and
16 sensing systems, and barriers and barri-
17 cades; and

18 “(iv) delay a chemical facility terrorist
19 incident for a sufficient period of time so
20 as to allow appropriate response through
21 on-site security response, barriers and bar-
22 ricades, hardened targets, and well-coordi-
23 nated response planning.

1 “(E) Securing and monitoring the ship-
2 ping, receipt, and storage of a substance of con-
3 cern for the chemical facility.

4 “(F) Deterring theft or diversion of a sub-
5 stance of concern.

6 “(G) Deterring insider sabotage.

7 “(H) Deterring cyber sabotage, including
8 by preventing unauthorized onsite or remote ac-
9 cess to critical process controls, including super-
10 visory control and data acquisition systems, dis-
11 tributed control systems, process control sys-
12 tems, industrial control systems, critical busi-
13 ness systems, and other sensitive computerized
14 systems.

15 “(I) Developing and exercising an internal
16 emergency plan for owners, operators, and cov-
17 ered individuals of a covered chemical facility
18 for responding to chemical facility terrorist inci-
19 dents at the facility. Any such plan shall in-
20 clude the provision of appropriate information
21 to any local emergency planning committee,
22 local law enforcement officials, and emergency
23 response providers to ensure an effective, collec-
24 tive response to terrorist incidents.

1 “(J) Maintaining effective monitoring,
2 communications, and warning systems, includ-
3 ing—

4 “(i) measures designed to ensure that
5 security systems and equipment are in
6 good working order and inspected, tested,
7 calibrated, and otherwise maintained;

8 “(ii) measures designed to regularly
9 test security systems, note deficiencies,
10 correct for detected deficiencies, and record
11 results so that they are available for in-
12 spection by the Department; and

13 “(iii) measures to allow the chemical
14 facility to promptly identify and respond to
15 security system and equipment failures or
16 malfunctions.

17 “(K) Ensuring mandatory annual security
18 training, exercises, and drills of chemical facil-
19 ity personnel appropriate to their roles, respon-
20 sibilities, and access to chemicals, including
21 participation by local law enforcement, local
22 emergency response providers, appropriate su-
23 pervisory and non-supervisory facility employees
24 and their employee representatives, if any.

1 “(L) Performing personnel surety for indi-
2 viduals with access to restricted areas or critical
3 assets by conducting appropriate background
4 checks and ensuring appropriate credentials for
5 unescorted visitors and chemical facility per-
6 sonnel, including permanent and part-time per-
7 sonnel, temporary personnel, and contract per-
8 sonnel, including—

9 “(i) measures designed to verify and
10 validate identity;

11 “(ii) measures designed to check
12 criminal history;

13 “(iii) measures designed to verify and
14 validate legal authorization to work; and

15 “(iv) measures designed to identify
16 people with terrorist ties.

17 “(M) Escalating the level of protective
18 measures for periods of elevated threat.

19 “(N) Specific threats, vulnerabilities, or
20 risks identified by the Secretary for that chem-
21 ical facility.

22 “(O) Reporting of significant security inci-
23 dents to the Department and to appropriate
24 local law enforcement officials.

1 “(P) Identifying, investigating, reporting,
2 and maintaining records of significant security
3 incidents and suspicious activities in or near the
4 site.

5 “(Q) Establishing one or more officials and
6 an organization responsible for—

7 “(i) security;

8 “(ii) compliance with the standards
9 under this paragraph;

10 “(iii) serving as the point of contact
11 for incident management purposes with
12 Federal, State, local, and tribal agencies,
13 law enforcement, and emergency response
14 providers; and

15 “(iv) coordination with Federal, State,
16 local, and tribal agencies, law enforcement,
17 and emergency response providers regard-
18 ing plans and security measures for the
19 collective response to a chemical facility
20 terrorist incident.

21 “(R) Maintaining appropriate records re-
22 lating to the security of the facility, including a
23 copy of the most recent security vulnerability
24 assessment and site security plan at the chem-
25 ical facility.

1 “(S) Assessing and, as appropriate, uti-
2 lizing methods to reduce the consequences of a
3 terrorist attack.

4 “(T) Methods to recover or mitigate the
5 release of a substance of concern in the event
6 of a chemical facility terrorist incident.

7 “(U) Any additional security performance
8 standards the Secretary may specify.

9 “(3) The term ‘chemical facility terrorist inci-
10 dent’ means any act or attempted act of terrorism
11 or terrorist activity committed at, near, or against a
12 chemical facility, including—

13 “(A) the release of a substance of concern
14 from a chemical facility;

15 “(B) the theft, misappropriation, or misuse
16 of a substance of concern from a chemical facil-
17 ity; or

18 “(C) the sabotage of a chemical facility or
19 a substance of concern at a chemical facility.

20 “(4) The term ‘employee representative’ means
21 the representative of the certified or recognized bar-
22 gaining agent engaged in a collective bargaining re-
23 lationship with a private or public owner or operator
24 of a chemical facility.

1 “(5) The term ‘covered individual’ means a per-
2 manent, temporary, full-time, or part-time employee
3 of a covered chemical facility or an employee of an
4 entity with which the covered chemical facility has
5 entered into a contract who is performing respon-
6 sibilities at the facility pursuant to the contract.

7 “(6) The term ‘covered chemical facility’ means
8 a chemical facility that meets the criteria of section
9 2102(b)(1).

10 “(7) The term ‘environment’ means—

11 “(A) the navigable waters, the waters of
12 the contiguous zone, and the ocean waters of
13 which the natural resources are under the ex-
14 clusive management authority of the United
15 States under the Magnuson-Stevens Fishery
16 Conservation and Management Act (16 U.S.C.
17 1801 et seq.); and

18 “(B) any other surface water, ground
19 water, drinking water supply, land surface or
20 subsurface strata, or ambient air within the
21 United States or under the jurisdiction of the
22 United States.

23 “(8) The term ‘owner or operator’ with respect
24 to a facility means any of the following:

25 “(A) The person who owns the facility.

1 “(B) The person who has responsibility for
2 daily operation of the facility.

3 “(C) The person who leases the facility.

4 “(9) The term ‘person’ means an individual,
5 trust, firm, joint stock company, corporation (includ-
6 ing a government corporation), partnership, associa-
7 tion, State, municipality, commission, political sub-
8 division of a State, or any interstate body and shall
9 include each department, agency, and instrumen-
10 tality of the United States.

11 “(10) The term ‘release’ means any spilling,
12 leaking, pumping, pouring, emitting, emptying, dis-
13 charging, injecting, escaping, leaching, dumping, or
14 disposing into the environment (including the aban-
15 donment or discarding of barrels, containers, and
16 other closed receptacles containing any hazardous
17 substance or pollutant or contaminant), but excludes
18 (A) any release which results in exposure to persons
19 solely within a workplace, with respect to a claim
20 which such persons may assert against the employer
21 of such persons, (B) emissions from the engine ex-
22 haust of a motor vehicle, rolling stock, aircraft, ves-
23 sel, or pipeline pumping station engine, (C) release
24 of source, byproduct, or special nuclear material
25 from a nuclear incident, as those terms are defined

1 in the Atomic Energy Act of 1954 (42 U.S.C. 2011
2 et seq.), if such release is subject to requirements
3 with respect to financial protection established by
4 the Nuclear Regulatory Commission under section
5 170 of such Act (42 U.S.C. 2210), or, for the pur-
6 poses of section 104 of the Comprehensive Environ-
7 mental Response Compensation and Liability Act of
8 1980 (42 U.S.C. 9604) or any other response action,
9 any release of source byproduct, or special nuclear
10 material from any processing site designated under
11 section 102(a)(1) or 302(a) of the Uranium Mill
12 Tailings Radiation Control Act of 1978 (42 U.S.C.
13 7912(a)(1); and (D) the normal application of fer-
14 tilizer.

15 “(11) The term ‘substance of concern’ means a
16 chemical substance in quantity and form that is so
17 designated by the Secretary under section 2102(a).

18 “(12) The term ‘method to reduce the con-
19 sequences of a terrorist attack’ means a measure
20 used at a chemical facility that reduces or eliminates
21 the potential consequences of a chemical facility ter-
22 rorist incident, including—

23 “(A) the elimination or reduction in the
24 amount of a substance of concern possessed or
25 planned to be possessed by an owner or oper-

ator of a covered chemical facility through the use of alternate substances, formulations, or processes;

“(B) the modification of pressures, temperatures, or concentrations of a substance of concern; and

“(C) the reduction or elimination of onsite handling of a substance of concern through improvement of inventory control or chemical use efficiency.

**“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF
CHEMICAL FACILITIES.**

“(a) SUBSTANCES OF CONCERN.—

“(1) DESIGNATION BY THE SECRETARY.—The Secretary may designate any chemical substance as a substance of concern and establish the threshold quantity for each such substance of concern.

“(2) MATTERS FOR CONSIDERATION.—In designating a chemical substance or establishing or adjusting the threshold quantity for a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy

1 that could result from a chemical facility terrorist
2 incident.

3 “(b) LIST OF COVERED CHEMICAL FACILITIES.—

4 “(1) CRITERIA FOR LIST OF FACILITIES.—The
5 Secretary shall maintain a list of covered chemical
6 facilities that the Secretary determines are of suffi-
7 cient security risk for inclusion on the list based on
8 the following criteria:

9 “(A) The potential threat or likelihood that
10 the chemical facility will be the target of a
11 chemical facility terrorist incident.

12 “(B) The potential extent and likelihood of
13 death, injury, or serious adverse effects to
14 human health, the environment, critical infra-
15 structure, public health, homeland security, na-
16 tional security, and the national economy that
17 could result from a chemical facility terrorist
18 incident.

19 “(C) The proximity of the chemical facility
20 to large population centers.

21 “(2) SUBMISSION OF INFORMATION.—The Sec-
22 retary may require the submission of information
23 with respect to the quantities of substances of con-
24 cern that an owner or operator of a chemical facility
25 possesses or plans to possess in order to determine

1 whether to designate a chemical facility as a covered
2 chemical facility for purposes of this title.

3 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
4 RISK-BASED TIERS.—

5 “(1) ASSIGNMENT.—The Secretary shall assign
6 each covered chemical facility to one of four risk-
7 based tiers established by the Secretary, with tier
8 one representing the highest degree of risk and tier
9 four the lowest degree of risk.

10 “(2) PROVISION OF INFORMATION.—The Sec-
11 retary may request, and the owner or operator of a
12 covered chemical facility shall provide, any additional
13 information beyond any information required to be
14 submitted under subsection (b)(2) that may be nec-
15 essary for the Secretary to assign the chemical facil-
16 ity to the appropriate tier under paragraph (1).

17 “(3) NOTIFICATION.—Not later than 60 days
18 after the date on which the Secretary determines
19 that a chemical facility is a covered chemical facility
20 or is no longer a covered chemical facility or changes
21 the tier assignment under paragraph (1) of a cov-
22 ered chemical facility, the Secretary shall notify the
23 owner or operator of that chemical facility of that
24 determination or change together with the reason for
25 the determination or change and, upon the request

1 of the owner or operator of a covered chemical facil-
2 ity, provide to the owner or operator of the covered
3 chemical facility the following information:

4 “(A) The number of individuals at risk of
5 death, injury, or severe adverse effects to
6 human health as a result of a worst case chem-
7 ical facility terrorist incident at the covered
8 chemical facility.

9 “(B) Information related to the criticality
10 of the covered chemical facility.

11 “(C) The proximity or interrelationship of
12 the covered chemical facility to other critical in-
13 frastructure.

14 “(d) REQUIREMENT FOR REVIEW.—The Secretary—

15 “(1) shall periodically review—

16 “(A) the designation of a substance of con-
17 cern and the threshold quantity under sub-
18 section (a)(1); and

19 “(B) the criteria under subsection (b)(1);
20 and

21 “(2) may at any time determine whether a
22 chemical facility is a covered chemical facility or
23 change the tier to which such a facility is assigned
24 under subsection (c)(1).

1 “(e) PROVISION OF THREAT-RELATED INFORMA-
2 TION.—In order to effectively assess the vulnerabilities to
3 a covered chemical facility, the Secretary shall provide to
4 the owner, operator, or security officer of a covered chem-
5 ical facility threat information regarding probable threats
6 to the facility and methods that could be used in a chem-
7 ical facility terrorist incident.

8 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
9 **SITE SECURITY PLANS.**

10 “(a) IN GENERAL.—

11 “(1) REQUIREMENT.—The Secretary shall—

12 “(A) establish standards, protocols, and
13 procedures for security vulnerability assess-
14 ments and site security plans to be required for
15 covered chemical facilities;

16 “(B) require the owner or operator of each
17 covered chemical facility to—

18 “(i) conduct an assessment of the vul-
19 nerability of the covered chemical facility
20 to a range of chemical facility terrorist in-
21 cidents, including an incident that results
22 in a worst-case release of a substance of
23 concern;

24 “(ii) prepare and implement a site se-
25 curity plan for that covered chemical facil-

1 ity that addresses the security vulnerability
2 assessment and meets the risk-based chem-
3 ical security performance standards under
4 subsection (b); and

5 “(iii) include at least one supervisory
6 and at least one non-supervisory employee
7 of the covered chemical facility, and at
8 least one employee representative, from
9 each bargaining agent at the covered
10 chemical facility, if any, in developing the
11 security vulnerability assessment and site
12 security plan required under this clause;

13 “(C) set deadlines, by tier, for the comple-
14 tion of security vulnerability assessments and
15 site security plans;

16 “(D) upon request, as necessary, and to
17 the extent that resources permit, provide tech-
18 nical assistance to a covered chemical facility
19 conducting a vulnerability assessment or site se-
20 curity plan required under this section;

21 “(E) establish specific deadlines and re-
22 quirements for the submission by a covered
23 chemical facility of information describing—

24 “(i) any change in the use by the cov-
25 ered chemical facility of more than a

1 threshold amount of any substance of con-
2 cern that may affect the requirements of
3 the chemical facility under this title; or

4 “(ii) any material modification to a
5 covered chemical facility’s operations or
6 site that may affect the security vulner-
7 ability assessment or site security plan
8 submitted by the covered chemical facility;

9 “(F) require the owner or operator of a
10 covered chemical facility to review and resubmit
11 a security vulnerability assessment or site secu-
12 rity plan not less frequently than once every 5
13 years; and

14 “(G) not later than 180 days after the
15 date on which the Secretary receives a security
16 vulnerability assessment or site security plan
17 under this title, review and approve or dis-
18 approve such assessment or plan.

19 “(2) INHERENTLY GOVERNMENTAL FUNC-
20 TION.—The approval or disapproval of a security
21 vulnerability assessment or site security plan under
22 this section is an inherently governmental function.

23 “(b) RISK-BASED CHEMICAL SECURITY PERFORM-
24 ANCE STANDARDS.—The Secretary shall establish risk-
25 based chemical security performance standards for the site

1 security plans required to be prepared by covered chemical
2 facilities. In establishing such standards, the Secretary
3 shall—

4 “(1) require separate and, as appropriate, in-
5 creasingly stringent risk-based chemical security per-
6 formance standards for site security plans as the
7 level of risk associated with the tier increases; and

8 “(2) permit each covered chemical facility sub-
9 mitting a site security plan to select a combination
10 of security measures that satisfy the risk-based
11 chemical security performance standards established
12 by the Secretary under this subsection.

13 “(c) CO-LOCATED CHEMICAL FACILITIES.—The Sec-
14 retary may allow an owner or operator of a covered chem-
15 ical facility that is located geographically close to another
16 covered chemical facility to develop and implement coordi-
17 nated security vulnerability assessments and site security
18 plans.

19 “(d) ALTERNATE SECURITY PROGRAMS SATISFYING
20 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-
21 MENT AND SITE SECURITY PLAN.—

22 “(1) ACCEPTANCE OF PROGRAM.—In response
23 to a request by an owner or operator of a covered
24 chemical facility, the Secretary may accept an alter-
25 nate security program submitted by the owner or op-

erator of the facility as a component of the security vulnerability assessment or site security plan required under this section, if the Secretary determines that such alternate security program, in combination with other components of the security vulnerability assessment and site security plan submitted by the owner or operator of the facility—

“(A) meets the requirements of this title and the regulations promulgated pursuant to this title;

“(B) provides an equivalent level of security to the level of security established pursuant to the regulations promulgated under this title; and

“(C) includes employee participation as required under subsection (a)(1)(B)(iii).

“(2) SECRETARIAL REVIEW REQUIRED.—Nothing in this subsection shall relieve the Secretary of the obligation—

“(A) to review a security vulnerability assessment and site security plan submitted by a covered chemical facility under this section; and

“(B) to approve or disapprove each such assessment or plan on an individual basis ac-

1 cording to the deadlines established under sub-
2 section (a).

3 “(3) COVERED FACILITY’S OBLIGATIONS UNAF-
4 FECTED.—Nothing in this subsection shall relieve
5 any covered chemical facility of the obligation and
6 responsibility to comply with all of the requirements
7 of this title.

8 “(4) PERSONNEL SURETY ALTERNATE SECU-
9 RITY PROGRAM.—In response to an application from
10 a non-profit, personnel surety accrediting organiza-
11 tion acting on behalf of, and with written authoriza-
12 tion from, the owner or operator of a covered chem-
13 ical facility, the Secretary may accept a personnel
14 surety alternate security program that meets the re-
15 quirements of section 2115 and provides for a back-
16 ground check process that is—

17 “(A) expedited, affordable, reliable, and ac-
18 curate;

19 “(B) fully protective of the rights of cov-
20 ered individuals through procedures that are
21 consistent with the privacy protections available
22 under the Fair Credit Reporting Act (15 U.S.C.
23 1681 et seq.); and

24 “(C) is a single background check con-
25 sistent with a risk-based tiered program.

1 “(e) OTHER AUTHORITIES.—

2 “(1) REGULATION OF MARITIME FACILITIES.—

3 “(A) RISK-BASED TIERING.—Notwith-
4 standing any other provision of law, the owner
5 or operator of a chemical facility required to
6 submit a facility security plan under section
7 70103(c) of title 46, United States Code, shall
8 be required to submit information to the Sec-
9 retary necessary to determine whether to des-
10 ignate such a facility as a covered chemical fa-
11 cility and to assign the facility to a risk-based
12 tier under section 2102 of this title.

13 “(B) ADDITIONAL MEASURES.—In the case
14 of a facility designated as a covered chemical
15 facility under this title that is also regulated
16 under section 70103(c) of title 46, United
17 States Code, the Secretary shall require the
18 owner or operator of such facility to update the
19 vulnerability assessments and facility security
20 plans required under that section, if necessary,
21 to ensure an equivalent level of security for sub-
22 stances of concern, including the requirements
23 under section 2111, in the same manner as
24 other covered chemical facilities in this title.

“(C) INFORMATION SHARING AND PROTECTION.—Notwithstanding section 70103(d) of title 46, United States Code, the Secretary shall apply the information sharing and protection requirements in section 2110 of this title to a facility described in subparagraph (B).

“(D) ENFORCEMENT.—The Secretary shall establish, by rulemaking, procedures to ensure that an owner or operator of a covered chemical facility required to update the vulnerability assessment and facility security plan for the facility under subparagraph (B) is in compliance with the requirements of this title.

“(E) FORMAL AGREEMENT.—The Secretary shall require the Office of Infrastructure Protection and the Coast Guard to enter into a formal agreement detailing their respective roles and responsibilities in carrying out the requirements of this title. Such agreement shall ensure that the enforcement and compliance requirements under this title and section 70103 of title 46, United States Code, are not conflicting or duplicative

“(2) COORDINATION OF STORAGE LICENSING OR PERMITTING REQUIREMENT.—In the case of any

1 storage required to be licensed or permitted under
2 chapter 40 of title 18, United States Code, the Sec-
3 retary shall prescribe the rules and regulations for
4 the implementation of this section with the concur-
5 rence of the Attorney General and avoid unnecessary
6 duplication of regulatory requirements.

7 “(f) ROLE OF EMPLOYEES.—

8 “(1) DESCRIPTION OF ROLE REQUIRED.—As
9 appropriate, security vulnerability assessments or
10 site security plans required under this section shall
11 describe the roles or responsibilities that covered in-
12 dividuals are expected to perform to deter or re-
13 spond to a chemical facility terrorist incident.

14 “(2) TRAINING FOR EMPLOYEES.—The owner
15 or operator of a covered chemical facility required to
16 submit a site security plan under this section shall
17 annually provide each covered individual with a role
18 or responsibility referred to in paragraph (1) at the
19 facility with a minimum of 8 hours of training. Such
20 training shall—

21 “(A) include an identification and discus-
22 sion of substances of concern;

23 “(B) include a discussion of possible con-
24 sequences of a chemical facility terrorist inci-
25 dent;

1 “(C) review and exercise the covered chem-
2 ical facility’s site security plan, including any
3 requirements for differing threat levels;

4 “(D) include a review of information pro-
5 tection requirements;

6 “(E) include a discussion of physical and
7 cyber security equipment, systems, and methods
8 used to achieve chemical security performance
9 standards;

10 “(F) allow training with other relevant
11 participants, including Federal, State, local,
12 and tribal authorities, and first responders,
13 where appropriate;

14 “(G) use existing national voluntary con-
15 sensus standards, chosen jointly with employee
16 representatives, if any;

17 “(H) allow instruction through government
18 training programs, chemical facilities, academic
19 institutions, nonprofit organizations, industry
20 and private organizations, employee organiza-
21 tions, and other relevant entities that provide
22 such training;

23 “(I) use multiple training media and meth-
24 ods;

1 “(J) include identification and assessment
2 of methods to reduce the consequences of a ter-
3 rorist attack; and

4 “(K) include a discussion of appropriate
5 emergency response procedures.

6 **“SEC. 2104. SITE INSPECTIONS.**

7 “(a) RIGHT OF ENTRY.—For purposes of carrying
8 out this title, the Secretary shall have, at a reasonable
9 time and on presentation of credentials, a right of entry
10 to, on, or through any property of a covered chemical facil-
11 ity or any property on which any record required to be
12 maintained under this section is located.

13 “(b) INSPECTIONS AND VERIFICATIONS.—

14 “(1) IN GENERAL.—The Secretary shall, at
15 such time and place as the Secretary determines to
16 be reasonable and appropriate, conduct chemical fa-
17 cility security inspections and verifications.

18 “(2) REQUIREMENTS.—To ensure and evaluate
19 compliance with this title, including any regulations
20 or requirements adopted by the Secretary in further-
21 ance of the purposes of this title, in conducting an
22 inspection or verification under paragraph (1), the
23 Secretary shall have access to the owners, operators,
24 employees, and employee representatives, if any, of
25 a covered chemical facility.

1 “(c) UNANNOUNCED INSPECTIONS.—In addition to
2 any inspection conducted pursuant to subsection (b), the
3 Secretary shall require covered chemical facilities assigned
4 to tier 1 and tier 2 under section 2102(c)(1) to undergo
5 unannounced facility inspections. The inspections required
6 under this subsection shall be—

7 “(1) conducted without prior notice to the facil-
8 ity;

9 “(2) designed to evaluate at the chemical facil-
10 ity undergoing inspection—

11 “(A) the ability of the chemical facility to
12 prevent a chemical facility terrorist incident
13 that applicable chemical security performance
14 standards are intended to prevent;

15 “(B) the ability of the chemical facility to
16 protect against security threats that are re-
17 quired to be addressed by applicable chemical
18 security performance standards; and

19 “(C) any weaknesses in the security plan
20 of the chemical facility;

21 “(3) conducted so as not to affect the actual se-
22 curity, physical integrity, or safety of the chemical
23 facility or its employees while the inspection is con-
24 ducted; and

25 “(4) conducted—

1 “(A) every two years in the case of a cov-
 2 ered chemical facility assigned to tier 1; and

3 “(B) every four years in the case of a cov-
 4 ered chemical facility assigned to tier 2.

5 **“SEC. 2105. RECORDS.**

6 “(a) REQUESTS FOR RECORDS.—

7 “(1) IN GENERAL.—In carrying out this title,
 8 the Secretary may require the submission of or, on
 9 presentation of credentials, may at reasonable times
 10 obtain access to and copy any records, including any
 11 records maintained in electronic format, necessary
 12 for—

13 “(A) reviewing or analyzing a security vul-
 14 nerability assessment or site security plan sub-
 15 mitted under section 2103; or

16 “(B) assessing the implementation of such
 17 a site security plan.

18 “(2) PROPER HANDLING OF RECORDS.—In ac-
 19 cessing or copying any records under paragraph (1),
 20 the Secretary shall ensure that such records are
 21 handled and secured appropriately in accordance
 22 with section 2110.

23 “(b) PROVISION OF RECORDS TO EMPLOYEE REP-
 24 RESENTATIVES.—If a covered chemical facility has one or
 25 more certified or recognized bargaining agents, the owner

1 or operator of the covered chemical facility shall provide
2 an employee representative designated by each such bar-
3 gaining agent at such facility with a copy of any security
4 vulnerability assessment or site security plan submitted.
5 Each employee representative shall ensure that any such
6 assessment or plan provided to the representative is han-
7 dled and secured appropriately in accordance with section
8 2110.

9 **“SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.**

10 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
11 receipt of information concerning a threat that is relevant
12 to a certain covered chemical facility, the Secretary shall
13 provide such information in a timely manner, to the max-
14 imum extent practicable under applicable authority and in
15 the interests of national security, to the owner, operator,
16 or security officer of that covered chemical facility and to
17 a representative of each recognized or certified bargaining
18 agent at the facility, if any.

19 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
20 The Secretary shall require the owner or operator of a
21 covered chemical facility to provide information concerning
22 a threat in a timely manner about any significant security
23 incident or threat to the covered chemical facility or any
24 intentional or unauthorized penetration of the physical se-

1 curity or cyber security of the covered chemical facility
2 whether successful or unsuccessful.

3 **“SEC. 2107. ENFORCEMENT.**

4 “(a) REVIEW OF SITE SECURITY PLAN.—

5 “(1) DISAPPROVAL.—The Secretary shall dis-
6 approve a security vulnerability assessment or site
7 security plan submitted under this title if the Sec-
8 retary determines that—

9 “(A) the security vulnerability assessment
10 or site security plan does not comply with the
11 standards, protocols, or procedures under sec-
12 tion 2103(a)(1)(A); or

13 “(B) in the case of a site security plan—

14 “(i) the plan or the implementation of
15 the plan is insufficient to address
16 vulnerabilities identified in a security vul-
17 nerability assessment, site inspection, or
18 unannounced inspection of the covered
19 chemical facility; or

20 “(ii) the plan fails to meet all applica-
21 ble chemical facility security performance
22 standards.

23 “(2) PROVISION OF NOTIFICATION OF DIS-
24 APPROVAL.—If the Secretary disapproves the secu-
25 rity vulnerability assessment or site security plan

1 submitted by a covered chemical facility under this
2 title or the implementation of a site security plan by
3 such a chemical facility, the Secretary shall provide
4 the owner or operator of the covered chemical facil-
5 ity a written notification of the disapproval within
6 14 days of the date on which the Secretary dis-
7 approves such assessment or plan, that—

8 “(A) includes a clear explanation of defi-
9 ciencies in the assessment, plan, or implementa-
10 tion of the plan; and

11 “(B) requires the owner or operator of the
12 covered chemical facility to revise the assess-
13 ment or plan to address any deficiencies and,
14 by such date as the Secretary determines is ap-
15 propriate, to submit to the Secretary the re-
16 vised assessment or plan.

17 “(3) ORDER FOR COMPLIANCE.—Whenever the
18 Secretary determines that the owner or operator of
19 a covered chemical facility has violated or is in viola-
20 tion of any requirement of this title or has failed or
21 is failing to address any deficiencies in the assess-
22 ment, plan, or implementation of the plan by such
23 date as the Secretary determines to be appropriate,
24 the Secretary, after providing an opportunity for the

1 owner or operator of the covered chemical facility to
2 consult with the Secretary, may—

3 “(A) issue an order assessing a civil pen-
4 alty for any past or current violation, requiring
5 compliance immediately or within a specified
6 time period, or both; or

7 “(B) commence a civil action in the United
8 States district court in the district in which the
9 violation occurred for appropriate relief, includ-
10 ing temporary or permanent injunction.

11 “(4) ORDER TO CEASE OPERATIONS.—If the
12 Secretary determines that the owner or operator of
13 a covered chemical facility continues to be in non-
14 compliance after an order for compliance is issued
15 under paragraph (3), the Secretary may issue an
16 order to the owner or operator of a covered chemical
17 facility to cease operations at the facility until the
18 owner or operator complies with such order issued
19 under paragraph (3). Notwithstanding the preceding
20 sentence, the Secretary may not issue an order to
21 cease operations under this paragraph to the owner
22 or operator of a wastewater facility.

23 “(b) PENALTIES.—

24 “(1) CIVIL PENALTIES.—A court may award a
25 civil penalty, pursuant to an order issued by the Sec-

1 retary under this title, of not more than \$50,000 for
2 each day on which a violation occurs or a failure to
3 comply continues.

4 “(2) ADMINISTRATIVE PENALTIES.—The Sec-
5 retary may award an administrative penalty, pursu-
6 ant to an order issued under this title, of not more
7 than \$25,000 for each day on which a violation oc-
8 curs or a failure to comply continues.

9 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

10 “(a) ESTABLISHMENT.—The Secretary shall estab-
11 lish and provide information to the public regarding a
12 process by which any person may submit a report to the
13 Secretary regarding problems, deficiencies, or
14 vulnerabilities at a covered chemical facility associated
15 with the risk of a chemical facility terrorist incident.

16 “(b) CONFIDENTIALITY.—The Secretary shall keep
17 confidential the identity of a person that submits a report
18 under subsection (a) and any such report shall be treated
19 as protected information under section 2110 to the extent
20 that it does not consist of publicly available information.

21 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a report
22 submitted under subsection (a) identifies the person sub-
23 mitting the report, the Secretary shall respond promptly
24 to such person to acknowledge receipt of the report.

1 “(d) STEPS TO ADDRESS PROBLEMS.—The Sec-
2 retary shall review and consider the information provided
3 in any report submitted under subsection (a) and shall,
4 as necessary, take appropriate steps under this title to ad-
5 dress any problem, deficiency, or vulnerability identified
6 in the report.

7 “(e) RETALIATION PROHIBITED.—

8 “(1) PROHIBITION.—No owner or operator of a
9 covered chemical facility, profit or not-for-profit cor-
10 poration, association, or any contractor, subcon-
11 tractor or agent thereof, may discharge any em-
12 ployee or otherwise discriminate against any em-
13 ployee with respect to his compensation, terms, con-
14 ditions, or other privileges of employment because
15 the employee (or any person acting pursuant to a re-
16 quest of the employee)—

17 “(A) notified the Secretary, the owner or
18 operator of a covered chemical facility, or the
19 employee’s employer of an alleged violation of
20 this title, including communications related to
21 carrying out the employee’s job duties;

22 “(B) refused to engage in any practice
23 made unlawful by this title, if the employee has
24 identified the alleged illegality to the employer;

1 “(C) testified before or otherwise provided
2 information relevant for Congress or for any
3 Federal or State proceeding regarding any pro-
4 vision (or proposed provision) of this title;

5 “(D) commenced, caused to be commenced,
6 or is about to commence or cause to be com-
7 menced a proceeding under this title;

8 “(E) testified or is about to testify in any
9 such proceeding; or

10 “(F) assisted or participated or is about to
11 assist or participate in any manner in such a
12 proceeding or in any other manner in such a
13 proceeding or in any other action to carry out
14 the purposes of this title.

15 “(2) ENFORCEMENT ACTION.—Any employee
16 covered by this section who alleges discrimination by
17 an employer in violation of paragraph (1) may bring
18 an action governed by the rules and procedures,
19 legal burdens of proof, and remedies applicable
20 under subsections (d) through (h) of section 20109
21 of title 49, United States Code. A party may seek
22 district court review as set forth in subsection (d)(4)
23 of such section not later than 90 days after receiving
24 a written final determination by the Secretary of
25 Labor.

1 “(3) PROHIBITED PERSONNEL PRACTICES AF-
2 FECTING THE DEPARTMENT.—

3 “(A) IN GENERAL.—Notwithstanding any
4 other provision of law, any individual holding or
5 applying for a position within the Department
6 shall be covered by—

7 “(i) paragraphs (1), (8), and (9) of
8 section 2302(b) of title 5, United States
9 Code;

10 “(ii) any provision of law imple-
11 menting any of such paragraphs by pro-
12 viding any right or remedy available to an
13 employee or applicant for employment in
14 the civil service; and

15 “(iii) any rule or regulation prescribed
16 under any such paragraph.

17 “(B) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall be construed to affect
19 any rights, apart from those referred to in sub-
20 paragraph (A), to which an individual described
21 in that subparagraph might otherwise be enti-
22 tled to under law.

23 **“SEC. 2109. FEDERAL PREEMPTION.**

24 “‘This title does not preclude or deny any right of any
25 State or political subdivision thereof to adopt or enforce

1 any regulation, requirement, or standard of performance
2 with respect to a covered chemical facility that is more
3 stringent than a regulation, requirement, or standard of
4 performance issued under this title, or otherwise impair
5 any right or jurisdiction of any State or political subdivi-
6 sion thereof with respect to covered chemical facilities
7 within that State or political subdivision thereof.

8 **“SEC. 2110. PROTECTION OF INFORMATION.**

9 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
10 TECTED INFORMATION.—Protected information, as de-
11 scribed in subsection (g), that is provided to the Depart-
12 ment by the owner or operator of a covered chemical facil-
13 ity or created by the Department under the requirements
14 of this title—

15 “(1) is exempt from disclosure under section
16 552 of title 5, United States Code; and

17 “(2) may not be made available pursuant to
18 any State or local law requiring disclosure of infor-
19 mation or records.

20 “(b) INFORMATION SHARING.—The Secretary shall
21 facilitate and provide standards for the appropriate shar-
22 ing of protected information with and between Federal,
23 State, local, and tribal governments, emergency response
24 providers, law enforcement officials, designated super-
25 visory and non-supervisory covered chemical facility per-

1 sonnel with security, operational, or fiduciary responsi-
2 bility for the facility, and designated facility employee rep-
3 resentatives, if any.

4 “(c) TREATMENT OF INFORMATION IN ADJUDICA-
5 TIVE PROCEEDINGS.—In a proceeding under this title,
6 protected information described in subsection (g), or re-
7 lated vulnerability or security information, shall be treated
8 in any judicial or administrative action in a manner con-
9 sistent with the treatment of sensitive security information
10 under section 525 of the Department of Homeland Secu-
11 rity Appropriations Act, 2007 (Public Law 109–295; 120
12 Stat. 1321).

13 “(d) OTHER OBLIGATIONS UNAFFECTED.—Nothing
14 in this section affects any obligation of the owner or oper-
15 ator of a chemical facility under any other law to submit
16 or make available information required by such other law
17 to facility employees, employee organizations, or a Fed-
18 eral, State, tribal, or local government.

19 “(e) SUBMISSION OF INFORMATION TO CONGRESS.—
20 Nothing in this title shall permit or authorize the with-
21 holding of information from Congress or any committee
22 or subcommittee thereof.

23 “(f) DISCLOSURE OF INDEPENDENTLY FURNISHED
24 INFORMATION.—Nothing in this title shall affect any au-
25 thority or obligation of a Federal, State, or local agency

1 to protect or disclose any record or information that the
2 Federal, State, or local government agency obtains from
3 a chemical facility under any other law.

4 “(g) PROTECTED INFORMATION.—

5 “(1) IN GENERAL.—For purposes of this title,
6 protected information is the following:

7 “(A) Security vulnerability assessments
8 and site security plans submitted to the Sec-
9 retary under this title.

10 “(B) Portions of the following documents,
11 records, orders, notices, or letters that the Sec-
12 retary determines would be detrimental to
13 chemical facility security if disclosed and that
14 are developed by the Secretary or the owner or
15 operator of a covered chemical facility exclu-
16 sively for the purposes of this title:

17 “(i) Documents directly related to the
18 Secretary’s review and approval or dis-
19 approval of vulnerability assessments and
20 site security plans under this title.

21 “(ii) Documents directly related to in-
22 spections and audits under this title.

23 “(iii) Orders, notices, or letters re-
24 garding the compliance of a covered chem-

1 ical facility with the requirements of this
2 title.

3 “(iv) Information provided to or cre-
4 ated by the Secretary under section sub-
5 section (b) or (c) of section 2102.

6 “(C) Other information developed exclu-
7 sively for the purposes of this title that the Sec-
8 retary determines, if disclosed, would be detri-
9 mental to chemical facility security.

10 “(2) EXCLUSIONS.—For purposes of this sec-
11 tion, protected information does not include—

12 “(A) information that is otherwise publicly
13 available, including information that is required
14 to be made publicly available under any law;

15 “(B) information that a chemical facility
16 has lawfully disclosed other than in accordance
17 with this title; or

18 “(C) information that, if disclosed, would
19 not be detrimental to the security of a chemical
20 facility, including aggregate regulatory data
21 that the Secretary determines is appropriate to
22 describe facility compliance with the require-
23 ments of this title and the Secretary’s imple-
24 mentation of such requirements.

1 **“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF**
2 **A TERRORIST ATTACK.**

3 “(a) ASSESSMENT REQUIRED.—The owner or oper-
4 ator of a covered chemical facility shall include in the site
5 security plan conducted pursuant to section 2103, an as-
6 sessment of methods to reduce the consequences of a ter-
7 rorist attack on that chemical facility, including—

8 “(1) a description of the methods to reduce the
9 consequences of a terrorist attack assessed by the
10 covered chemical facility;

11 “(2) the degree to which each method to reduce
12 the consequences of a terrorist attack could, if ap-
13 plied, reduce the potential extent of death, injury, or
14 serious adverse effects to human health resulting
15 from a terrorist release;

16 “(3) the technical viability, costs, avoided costs
17 (including liabilities), savings, and applicability of
18 implementing each method to reduce the con-
19 sequences of a terrorist attack; and

20 “(4) any other information that the owner or
21 operator of the covered chemical facility considered
22 in conducting the assessment.

23 “(b) IMPLEMENTATION.—

24 “(1) IMPLEMENTATION.—The owner or oper-
25 ator of a covered chemical facility assigned to tier 1
26 or tier 2 that is required to conduct an assessment

1 under subsection (a) shall implement methods to re-
2 duce the consequences of a terrorist attack on the
3 chemical facility if the Secretary determines, based
4 on an assessment in subsection (a), that the imple-
5 mentation of such methods at the facility—

6 “(A) would significantly reduce the risk of
7 death, injury, or serious adverse effects to
8 human health resulting from a chemical facility
9 terrorist incident but would not increase the in-
10 terim storage of a substance of concern outside
11 the facility or directly result in the creation of
12 a new covered chemical facility assigned to tier
13 1 or tier 2 or the elevation of an existing cov-
14 ered chemical facility to tier 1 or tier 2;

15 “(B) can feasibly be incorporated into the
16 operation of the covered chemical facility; and

17 “(C) would not significantly and demon-
18 strably impair the ability of the owner or oper-
19 ator of the covered chemical facility to continue
20 the business of the facility at its location.

21 “(2) REVIEW OF INABILITY TO COMPLY.—

22 “(A) IN GENERAL.—An owner or operator
23 of a covered chemical facility who is unable to
24 comply with the Secretary’s determination
25 under paragraph (1) shall, within 60 days of re-

1 receipt of the Secretary's determination, provide
2 to the Secretary a written explanation that in-
3 cludes the reasons therefor.

4 “(B) REVIEW.—Not later than 60 days
5 after the receipt of an explanation submitted
6 under subparagraph (A), the Secretary, after
7 consulting with the owner or operator of the
8 covered chemical facility who submitted such
9 explanation, shall provide to the owner or oper-
10 ator a written determination of whether imple-
11 mentation shall be required pursuant to para-
12 graph (1). If the Secretary determines that im-
13 plementation is required, the facility shall be re-
14 quired to begin implementation within 180 days
15 of that determination.

16 “(c) PROVISION OF INFORMATION ON ALTERNATIVE
17 APPROACHES.—

18 “(1) IN GENERAL.—The Secretary shall make
19 available information to chemical facilities on the use
20 and availability of methods to reduce the con-
21 sequences of a chemical facility terrorist incident.

22 “(2) INFORMATION TO BE INCLUDED.—The in-
23 formation under paragraph (1) may include informa-
24 tion about—

1 “(A) general and specific types of such
2 methods;

3 “(B) combinations of chemical sources,
4 substances of concern, and hazardous processes
5 or conditions for which such methods could be
6 appropriate;

7 “(C) the availability of specific methods to
8 reduce the consequences of a terrorist attack;

9 “(D) the costs and cost savings resulting
10 from the use of such methods;

11 “(E) emerging technologies that could be
12 transferred from research models or prototypes
13 to practical applications;

14 “(F) the availability of technical assistance
15 and best practices; and

16 “(G) such other matters as the Secretary
17 determines is appropriate.

18 “(3) PUBLIC AVAILABILITY.—Information made
19 available under this subsection shall not identify any
20 specific chemical facility, violate the protection of in-
21 formation provisions under section 2110, or disclose
22 any proprietary information.

23 “(d) FUNDING FOR METHODS TO REDUCE THE CON-
24 SEQUENCES OF A TERRORIST ATTACK.—The Secretary
25 may make funds available to help defray the cost of imple-

1 menting methods to reduce the consequences of a terrorist
2 attack to covered chemical facilities that are required by
3 the Secretary to implement such methods.

4 **“SEC. 2112. APPLICABILITY.**

5 “‘This title shall not apply to—

6 “(1) any chemical facility that is owned and op-
7 erated by the Secretary of Defense;

8 “(2) the transportation in commerce, including
9 incidental storage, of any substance of concern regu-
10 lated as a hazardous material under chapter 51 of
11 title 49, United States Code; or

12 “(3) all or a specified portion of any chemical
13 facility that—

14 “(A) is subject to regulation by the Nu-
15 clear Regulatory Commission (hereinafter in
16 this paragraph referred to as the ‘Commission’)
17 or a State that has entered into an agreement
18 with the Commission under section 274 b. of
19 the Atomic Energy Act of 1954 (42 U.S.C.
20 2021 b.);

21 “(B) has had security controls imposed by
22 the Commission or State, whichever has the
23 regulatory authority, on the entire facility or
24 the specified portion of the facility; and

1 “(C) has been designated by the Commis-
2 sion, after consultation with the State, if any,
3 that regulates the facility, and the Secretary, as
4 excluded from the application of this title.

5 **“SEC. 2113. SAVINGS CLAUSE.**

6 “(a) IN GENERAL.—Nothing in this title shall affect
7 or modify in any way any obligation or liability of any
8 person under any other Federal law, including section 112
9 of the Clean Air Act (42 U.S.C. 7412), the Federal Water
10 Pollution Control Act (33 U.S.C. 1251 et seq.), the Re-
11 source Conservation and Recovery Act of 1976 (42 U.S.C.
12 6901 et seq.), the National Environmental Policy Act of
13 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety
14 and Health Act (29 U.S.C. 651 et seq.), the National
15 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-
16 gency Planning and Community Right to Know Act of
17 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water
18 Act (42 U.S.C. 300f et seq.), the Maritime Transportation
19 Security Act of 2002 (Public Law 107–295), the Com-
20 prehensive Environmental Response, Compensation, and
21 Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the
22 Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

23 “(b) OTHER REQUIREMENTS.—Nothing in this title
24 shall preclude or deny the right of any State or political
25 subdivision thereof to adopt or enforce any regulation, re-

1 quirement, or standard of performance relating to environ-
2 mental protection, health, or safety.

3 **“SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.**

4 “(a) IN GENERAL.—There is established in the De-
5 partment an Office of Chemical Facility Security, headed
6 by a Director, who shall be a member of the Senior Execu-
7 tive Service in accordance with subchapter VI of chapter
8 33 of title 5, United States Code, under section 5382 of
9 that title, and who shall be responsible for carrying out
10 the responsibilities of the Secretary under this title.

11 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
12 vidual selected by the Secretary as the Director of the Of-
13 fice of Chemical Facility Security shall have professional
14 qualifications and experience necessary for effectively di-
15 recting the Office of Chemical Facility Security and car-
16 rying out the requirements of this title, including a dem-
17 onstrated knowledge of physical infrastructure protection,
18 cybersecurity, chemical facility security, hazard analysis,
19 chemical process engineering, chemical process safety re-
20 views, or other such qualifications that the Secretary de-
21 termines to be necessary.

22 “(c) SELECTION PROCESS.—The Secretary shall
23 make a reasonable effort to select an individual to serve
24 as the Director from among a group of candidates that
25 is diverse with respect to race, ethnicity, age, gender, and

1 disability characteristics and submit to the Committee on
2 Homeland Security and the Committee on Energy and
3 Commerce of the House of Representatives and the Com-
4 mittee on Homeland Security and Governmental Affairs
5 of the Senate information on the selection process, includ-
6 ing details on efforts to assure diversity among the can-
7 didates considered for this position.

8 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
9 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
10 **TIES.**

11 “(a) REGULATIONS ISSUED BY THE SECRETARY.—

12 “(1) IN GENERAL.—

13 “(A) REQUIREMENT.—The Secretary shall
14 issue regulations to require covered chemical fa-
15 cilities to establish personnel surety for individ-
16 uals described in subparagraph (B) by con-
17 ducting appropriate security background checks
18 and ensuring appropriate credentials for
19 unescorted visitors and chemical facility per-
20 sonnel, including permanent and part-time per-
21 sonnel, temporary personnel, and contract per-
22 sonnel, including—

23 “(i) measures designed to verify and
24 validate identity;

1 “(ii) measures designed to check
2 criminal history;

3 “(iii) measures designed to verify and
4 validate legal authorization to work; and

5 “(iv) measures designed to identify
6 people with terrorist ties.

7 “(B) INDIVIDUALS DESCRIBED.—For pur-
8 poses of subparagraph (A), an individual de-
9 scribed in this subparagraph is an individual
10 with access to restricted areas or critical assets
11 of a covered chemical facility, including—

12 “(i) a covered individual who has
13 unescorted access to restricted areas or
14 critical assets or who is provided with a
15 copy of a security vulnerability assessment
16 or site security plan;

17 “(ii) a person associated with a cov-
18 ered chemical facility who is provided with
19 a copy of a security vulnerability assess-
20 ment or site security plan; or

21 “(iii) a person who is determined by
22 the Secretary to require a security back-
23 ground check based on chemical facility se-
24 curity performance standards.

1 “(2) REGULATIONS.—The regulations required
2 by paragraph (1) shall set forth—

3 “(A) the scope of the security background
4 checks, including the types of disqualifying of-
5 fenses and the time period covered for each per-
6 son subject to a security background check
7 under paragraph (1);

8 “(B) the processes to conduct the security
9 background checks;

10 “(C) the necessary biographical informa-
11 tion and other data required in order to con-
12 duct the security background checks;

13 “(D) a redress process for an adversely-af-
14 fected person consistent with subsections (b)
15 and (c); and

16 “(E) a prohibition on an owner or operator
17 of a covered chemical facility unreasonably mis-
18 representing to an employee or other relevant
19 person, including an arbiter involved in a labor
20 arbitration, the scope, application, or meaning
21 of any rules, regulations, directives, or guidance
22 issued by the Secretary related to security back-
23 ground check requirements for covered individ-
24 uals when conducting a security background
25 check.

1 “(b) REQUIREMENTS.—Upon issuance of regulations
2 under subsection (a), the Secretary shall prohibit the
3 owner or operator of a covered chemical facility from mak-
4 ing an adverse employment decision, including removal or
5 suspension of the employee, due to such regulations with
6 respect to such person unless such person—

7 “(1) has been convicted of, has been found not
8 guilty of by reason of insanity of, or is under want,
9 warrant, or indictment for a permanent disqualifying
10 criminal offense listed in part 1572 of title 49, Code
11 of Federal Regulations;

12 “(2) was convicted of or found not guilty by
13 reason of insanity of an interim disqualifying crimi-
14 nal offense listed in part 1572 of title 49, Code of
15 Federal Regulations, within 7 years of the date on
16 which the covered chemical facility performs the se-
17 curity background check;

18 “(3) was incarcerated for an interim disquali-
19 fying criminal offense listed in part 1572 of title 49,
20 Code of Federal Regulations, and released from in-
21 carceration within 5 years of the date that the chem-
22 ical facility performs the security background check;

23 “(4) is determined by the Secretary to be on
24 the consolidated terrorist watchlist; or

1 “(5) is determined, as a result of the security
2 background check, not to be legally authorized to
3 work in the United States.

4 “(c) REDRESS PROCESS.—Upon the issuance of reg-
5 ulations under subsection (a), the Secretary shall—

6 “(1) require an adequate and prompt redress
7 process for a person subject to a security back-
8 ground check under subsection (a)(1) who is sub-
9 jected to an adverse employment decision, including
10 removal or suspension of the employee, due to such
11 regulations that is consistent with the appeals and
12 waiver processes established for applicants for trans-
13 portation workers at ports, as required by section
14 70105(c) of title 46, United States Code, including
15 all rights to hearings before an administration law
16 judge, scope of review, a review of an unclassified
17 summary of classified evidence equivalent to the
18 summary provided in part 1515 of title 49, Code of
19 Federal Regulations, and procedures for new evi-
20 dence for both appeals and waiver decisions;

21 “(2) have the authority to order an appropriate
22 remedy, including reinstatement of the person sub-
23 ject to a security background check under subsection
24 (a)(1), should the Secretary determine that the
25 owner or operator of a covered chemical facility

1 wrongfully made an adverse employment decision re-
2 garding such person pursuant to such rule, regula-
3 tion, directive, or guidance;

4 “(3) ensure that the redress process required
5 under this subsection affords to the covered indi-
6 vidual a full disclosure of any public-record event
7 covered by subsection (b) that provides the basis for
8 an adverse employment decision; and

9 “(4) ensure that the person subject to a secu-
10 rity background check under subsection (a)(1) re-
11 ceives the person’s full wages and benefits until all
12 appeals and waiver procedures are exhausted.

13 “(d) RESTRICTIONS ON USE AND MAINTENANCE OF
14 INFORMATION.—Information obtained under this section
15 by the Secretary or the owner or operator of a covered
16 chemical facility shall be handled as follows:

17 “(1) Such information may not be made avail-
18 able to the public.

19 “(2) Such information may not be accessed by
20 employees of the facility except for such employees
21 who are directly involved with collecting the informa-
22 tion or conducting or evaluating security background
23 checks.

24 “(3) Such information shall be maintained con-
25 fidentially by the facility and the Secretary and may

1 be used only for making determinations under this
2 section.

3 “(4) The Secretary may share such information
4 with other Federal, State, local, and tribal law en-
5 forcement agencies.

6 “(e) RIGHTS AND RESPONSIBILITIES.—Nothing in
7 this section shall be construed to abridge any right or re-
8 sponsibility of a person subject to a security background
9 check under subsection (a)(1) or an owner or operator of
10 a covered chemical facility under any other Federal, State,
11 local, or tribal law or collective bargaining agreement.

12 “(f) PREEMPTION.—Nothing in this section shall be
13 construed to preempt, alter, or affect a Federal, State,
14 local, or tribal law that requires criminal history back-
15 ground checks, checks on the authorization of an indi-
16 vidual to work in the United States, or other background
17 checks of persons subject to security background checks
18 under subsection (a)(1).

19 “(g) DEFINITION OF SECURITY BACKGROUND
20 CHECK.—The term ‘security background check’ means a
21 review at no cost to any person subject to a security back-
22 ground check under subsection (a)(1) of the following for
23 the purpose of identifying individuals who may pose a
24 threat to chemical facility security, to national security,
25 or of terrorism:

1 “(1) Relevant databases to verify and validate
2 identity.

3 “(2) Relevant criminal history databases.

4 “(3) In the case of an alien (as defined in sec-
5 tion 101 of the Immigration and Nationality Act (8
6 U.S.C. 1101(a)(3))), the relevant databases to deter-
7 mine the status of the alien under the immigration
8 laws of the United States.

9 “(4) The consolidated terrorist watchlist.

10 “(5) Other relevant information or databases,
11 as determined by the Secretary.

12 “(h) SAVINGS CLAUSE.—Nothing in this section shall
13 be construed as creating any new right or modifying any
14 existing right of an individual to appeal a determination
15 by the Secretary as a result of a check against a terrorist
16 watch list.

17 **“SEC. 2116. CITIZEN SUITS.**

18 “(a) IN GENERAL.—Except as provided in subsection
19 (c), any person may commence a civil action on the per-
20 son’s own behalf—

21 “(1) against any person (including the United
22 States and any other governmental instrumentality
23 or agency, to the extent permitted by the eleventh
24 amendment to the Constitution) who is alleged to be
25 in violation of any standard, regulation, condition,

1 requirement, prohibition, or order which has become
2 effective pursuant to this title; or

3 “(2) against the Secretary, if there is an alleged
4 failure of the Secretary to perform any act or duty
5 under this title that is not discretionary for the Sec-
6 retary.

7 “(b) COURT OF JURISDICTION.—

8 “(1) IN GENERAL.—Any action under sub-
9 section (a)(1) shall be brought in the district court
10 for the district in which the alleged violation oc-
11 curred. Any action brought under subsection (a)(2)
12 may be brought in the district court for the district
13 in which the alleged violation occurred or in the
14 United States District Court of the District of Co-
15 lumbia.

16 “(2) RELIEF.—The district court shall have ju-
17 risdiction, without regard to the amount in con-
18 troversy or the citizenship of the parties, to enforce
19 the standard, regulation, condition, requirement,
20 prohibition, or order, referred to in subsection
21 (a)(1), to order such person to take such other ac-
22 tion as may be necessary, or both, or to order the
23 Secretary to perform the act or duty referred to in
24 subsection (a)(2), as the case may be, and to apply
25 any appropriate civil penalties under section 2107.

1 “(c) ACTIONS PROHIBITED.—No action may be com-
2 menced under subsection (a)—

3 “(1) prior to 60 days after the date on which
4 the person commencing the action has given notice
5 of the alleged violation to—

6 “(A) the Secretary; and

7 “(B) in the case of an action under sub-
8 section (a), any alleged violator of such stand-
9 ard, regulation, condition, requirement, prohibi-
10 tion, or order; or

11 “(2) if the Secretary has commenced and is
12 diligently prosecuting a civil or criminal action in a
13 court of the United States or a State, or has issued
14 an administrative order, to require compliance with
15 such standard, regulation, condition, requirement,
16 prohibition, or order.

17 “(d) NOTICE.—Notice under this section shall be
18 given in such manner as the Secretary shall prescribe by
19 regulation.

20 “(e) INTERVENTION.—In any action under this sec-
21 tion the Secretary, if not a party, may intervene as a mat-
22 ter of right.

23 “(f) COSTS.—The court, in issuing any final order
24 in any action brought pursuant to this section, may award
25 costs of litigation (including reasonable attorney and ex-

1 pert witness fees) to the prevailing or substantially pre-
 2 vailing party, whenever the court determines such an
 3 award is appropriate. The court may, if a temporary re-
 4 straining order or preliminary injunction is sought, require
 5 the filing of a bond or equivalent security in accordance
 6 with the Federal Rules of Civil Procedure.

7 “(g) OTHER RIGHTS PRESERVED.—Nothing in this
 8 section shall restrict any right which any person (or class
 9 of persons) may have under any statute or common law.

10 **“SEC. 2117. ANNUAL REPORT TO CONGRESS.**

11 “(a) ANNUAL REPORT.—Not later than one year
 12 after the date of the enactment of this title, annually
 13 thereafter for the next four years, and biennially there-
 14 after, the Secretary shall submit to the Committee on
 15 Homeland Security and the Committee on Energy and
 16 Commerce of the House of Representatives and the Com-
 17 mittee on Homeland Security and Governmental Affairs
 18 and the Committee on Environment and Public Works of
 19 the Senate a report on progress in achieving compliance
 20 with this title. Each such report shall include the fol-
 21 lowing:

22 “(1) A qualitative discussion of how covered
 23 chemical facilities, differentiated by tier, have re-
 24 duced the risks of chemical facility terrorist inci-
 25 dents at such facilities, including—

1 “(A) a generalized summary of measures
2 implemented by covered chemical facilities in
3 order to meet each risk-based chemical facility
4 performance standard established by this title,
5 and those that the facilities already had in
6 place—

7 “(i) in the case of the first report
8 under this section, before the issuance of
9 the final rule implementing the regulations
10 known as the ‘Chemical Facility Anti-Ter-
11 rorism Standards’, issued on April 9,
12 2007; and

13 “(ii) in the case of each subsequent
14 report, since the submittal of the most re-
15 cent report submitted under this section;
16 and

17 “(B) any other generalized summary the
18 Secretary deems appropriate to describe the
19 measures covered chemical facilities are imple-
20 menting to comply with the requirements of
21 this title.

22 “(2) A quantitative summary of how the cov-
23 ered chemical facilities, differentiated by tier, are
24 complying with the requirements of this title during
25 the period covered by the report and how the Sec-

1 retary is implementing and enforcing such require-
2 ments during such period, including—

3 “(A) the number of chemical facilities that
4 provided the Secretary with information about
5 possessing substances of concern, as described
6 in section 2102(b)(2);

7 “(B) the number of covered chemical facili-
8 ties assigned to each tier;

9 “(C) the number of security vulnerability
10 assessments and site security plans submitted
11 by covered chemical facilities;

12 “(D) the number of security vulnerability
13 assessments and site security plans approved
14 and disapproved by the Secretary;

15 “(E) the number of covered chemical facili-
16 ties without approved security vulnerability as-
17 sessments or site security plans;

18 “(F) the number of chemical facilities that
19 have been assigned to a different tier or are no
20 longer regulated by the Secretary due to imple-
21 mentation of a method to reduce the con-
22 sequences of a terrorist attack;

23 “(G) the number of orders for compliance
24 issued by the Secretary;

1 “(H) the administrative penalties assessed
2 by the Secretary for non-compliance with the
3 requirements of this title;

4 “(I) the civil penalties assessed by the
5 court for non-compliance with the requirements
6 of this title; and

7 “(J) any other regulatory data the Sec-
8 retary deems appropriate to describe facility
9 compliance with the requirements of this title
10 and the Secretary’s implementation of such re-
11 quirements.

12 “(b) PUBLIC AVAILABILITY.—A report submitted
13 under this section shall be made publicly available.

14 **“SEC. 2118. AUTHORIZATION OF APPROPRIATIONS.**

15 “There is authorized to be appropriated to the Sec-
16 retary of Homeland Security to carry out this title—

17 “(1) \$325,000,000 for fiscal year 2011, of
18 which \$100,000,000 shall be made available to pro-
19 vide funding for methods to reduce the consequences
20 of a terrorist attack;

21 “(2) \$300,000,000 for fiscal year 2012, of
22 which \$75,000,000 shall be made available to pro-
23 vide funding for methods to reduce the consequences
24 of a terrorist attack; and

1 “(3) \$275,000,000 for fiscal year 2013, of
 2 which \$50,000,000 shall be made available to pro-
 3 vide funding for methods to reduce the consequences
 4 of a terrorist attack.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
 6 in section 1(b) of such Act is amended by adding at the
 7 end the following:

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT
 CHEMICAL FACILITIES

“Sec. 2101. Definitions.

“Sec. 2102. Risk-based designation and ranking of chemical facilities.

“Sec. 2103. Security vulnerability assessments and site security plans.

“Sec. 2104. Site inspections.

“Sec. 2105. Records.

“Sec. 2106. Timely sharing of threat information.

“Sec. 2107. Enforcement.

“Sec. 2108. Whistleblower protections.

“Sec. 2109. Federal preemption.

“Sec. 2110. Protection of information.

“Sec. 2111. Methods to reduce the consequences of a terrorist attack.

“Sec. 2112. Applicability.

“Sec. 2113. Savings clause.

“Sec. 2114. Office of Chemical Facility Security.

“Sec. 2115. Security background checks of covered individuals at certain chem-
 ical facilities.

“Sec. 2116. Citizen suits.

“Sec. 2117. Annual report to Congress.

“Sec. 2118. Authorization of appropriations.”.

8 (c) CONFORMING REPEAL.—

9 (1) REPEAL.—The Department of Homeland
 10 Security Appropriations Act, 2007 (Public Law
 11 109–295) is amended by striking section 550.

12 (2) EFFECTIVE DATE.—The amendment made
 13 by paragraph (1) shall take effect on October 1,
 14 2009.

15 (d) TREATMENT OF CFATS REGULATIONS.—

1 (1) SENSE OF CONGRESS.—It is the sense of
2 Congress that the Secretary of Homeland Security
3 was granted statutory authority under section 550
4 of the Department of Homeland Security Appropria-
5 tions Act (Public Law 109–295) to regulate security
6 practices at chemical facilities until October 1, 2009.
7 Pursuant to that section the Secretary prescribed
8 regulations known as the Chemical Facility Anti-
9 Terrorism Standards, or “CFATS”.

10 (2) USE OF CURRENT REGULATIONS.—In car-
11 rying out the requirements of title XXI of the
12 Homeland Security Act of 2002, as added by sub-
13 section (a), the Secretary may, to the extent that the
14 Secretary determines is appropriate, use any of the
15 regulations known as CFATS regulations, as in ef-
16 fect immediately before the date of the enactment of
17 this Act, that the Secretary determines carry out
18 such requirements.

19 (3) AMENDMENT OF CFATS.—The Secretary
20 shall amend the regulations known as the Chemical
21 Facility Anti-Terrorism Standards to ensure that
22 such regulations fulfill the requirements of this Act
23 and the amendments made by this Act, to the extent
24 that the requirements of this Act and the amend-
25 ments made by this Act differ from the requirements

1 of such regulations, as in effect on the date of the
2 enactment of this Act.

3 (4) USE OF TOOLS DEVELOPED FOR CFATS.—

4 In carrying out this Act and the amendments made
5 by this Act, to the extent determined appropriate by
6 the Secretary, the Secretary may use such rules or
7 tools developed for purposes of the regulations
8 known as the Chemical Facility Anti-Terrorism
9 Standards, including the list of substances of con-
10 cern, usually referred to as “Appendix A” and the
11 chemical security assessment tool (which includes fa-
12 cility registration, a top-screen questionnaire, a secu-
13 rity vulnerability assessment tool, a site security
14 plan template, and a chemical vulnerability informa-
15 tion repository).

16 (e) FACILITIES COVERED BY CFATS.—The owner or
17 operator of a covered chemical facility, who, before the ef-
18 fective date of the final regulations issued under title XXI
19 of the Homeland Security Act of 2002, as added by sub-
20 section (a), submits a security vulnerability assessment or
21 site security plan under the regulations known as CFATS
22 regulations, as in effect immediately before the enactment
23 of this Act, shall be required to update or amend the facili-
24 ty’s security vulnerability assessment and site security
25 plan to reflect any additional requirements of this Act or

1 the amendments made by this Act, according to a timeline
2 established by the Secretary.

3 (f) CONSULTATION WITH OTHER PERSONS.—In de-
4 veloping and carrying out the regulations under title XXI
5 of the Homeland Security Act of 2002, as added by sub-
6 section (a), the Secretary shall consult with the Adminis-
7 trator of the Environmental Protection Agency, and other
8 persons, as appropriate, regarding—

9 (1) the designation of substances of concern;

10 (2) methods to reduce the consequences of a
11 terrorist attack;

12 (3) security at co-owned and co-operated drink-
13 ing water and wastewater facilities;

14 (4) the treatment of protected information; and

15 (5) such other matters as the Secretary deter-
16 mines necessary.

17 (g) DEADLINE FOR REGULATIONS.—

18 (1) PROPOSED RULE.—The Secretary of Home-
19 land Security shall promulgate a proposed rule to
20 fulfill the requirements of title XXI of the Homeland
21 Security Act of 2002, as added by subsection (a),
22 not later than 6 months after the date of the enact-
23 ment of this Act.

24 (2) FINAL RULE.—The Secretary shall, after
25 proper notice and opportunity for public comment,

1 promulgate a final rule to fulfill the requirements of
2 such title not later than 18 months after the date
3 of the enactment of this Act.

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